

§ 656.23

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of the review procedures at § 656.26 of this part.

(f) If the alien qualifies for the occupation, the Immigration Officer shall indicate the occupation on the Application for Alien Employment Certification form. The Immigration Officer then shall promptly forward a copy of the Application for Alien Employment Certification form, without attachments, to the Director, indicating thereon the occupation, the Immigration Officer who made the Schedule A determination, and the date of the determination (see § 656.30 of this part for the significance of this date).

[56 FR 54929, Oct 23, 1991]

§ 656.23 Applications for labor certifications for Schedule B occupations; requests for waivers from Schedule B.

(a) Occupations listed on *Schedule B* require little or no education or experience, and employees can be trained quickly to perform them satisfactorily. In addition, many of these occupations are entry jobs in their industries which offer opportunities for high school graduates and other U.S. workers who otherwise would have difficulty finding their first employment and gaining work experience. The Director has determined that there is generally a nationwide surplus of U.S. workers who are available for and who can qualify for *Schedule B* job opportunities which offer prevailing wages and working conditions.

(b) Some of the occupations on *Schedule B* are also often characterized by relatively low wages, long and irregular working hours, and poor working conditions which lead to excessive turnover. In most instances, the Director has determined through past experience that the employment of aliens has failed to resolve such employment problems since the aliens, like U.S. workers, often quickly move to other jobs. This results in an adverse effect upon the wages and working conditions of U.S. workers who are employed in occupations which require similar education and experience.

(c) Therefore, the Director has determined that for occupations listed on *Schedule B* U.S. workers are generally available throughout the United

States, and that the employment of aliens in *Schedule B* occupations will generally adversely affect the wages and working conditions of U.S. workers similarly employed.

(d) An individual employer or the employer's attorney or agent may petition the regional Certifying Officer for the geographic area in which the job opportunity is located for a *Schedule B* waiver on behalf of an alien with respect to a specific job opportunity. The petition shall be submitted to the local office serving the geographic area of intended employment. The petition shall include a written request for a *Schedule B* waiver, a completed *Application for Alien Employment Certification* form, and the following:

(1) The documentation required by §§ 656.20(b), (c), (e), (f), and (g) and 656.21; and

(2) Documentary verification, which the employer has obtained from the local job service office which contains the job opportunity in its administrative area, that the employer has had a job order for the same job on file with the same local office for a period of 30 calendar days and that the local office and the employer, using the job order, were not able to obtain a qualified U.S. worker.

(e) The regional Certifying Officer, using the procedures and standards set forth in § 656.24, shall either grant or deny the waiver and shall inform the employer of the determination in writing.

(f) If the waiver is granted, the regional Certifying Officer shall issue a labor certification.

(g) If the waiver is denied, the regional Certifying Officer shall follow the procedures set forth at paragraphs (c) through (g) of § 656.25.

(Approved by the Office of Management and Budget under control number 1205-0015)

[45 FR 83933, Dec. 19, 1980, as amended at 49 FR 18295, Apr. 30, 1984; 56 FR 54929, Oct. 23, 1991]

§ 656.24 Labor certification determinations.

(a) If the labor certification presents a special or unique problem, the regional Certifying Officer may refer the application to the national Certifying

Officer for determination. If the Director has directed that certain types of applications or specific applications be handled in the USES national office, the regional Certifying Officer shall refer such applications to the national Certifying Officer.

(b) The regional or national Certifying Officer, as appropriate, shall make a determination either to grant the labor certification or to issue a *Notice of Findings* on the basis of whether or not:

(1) The employer has met the requirements of this part. However, where the Certifying Officer determines that the employer has committed harmless error, the Certifying Officer nevertheless may grant the labor certification, *Provided*, That the labor market has been tested sufficiently to warrant a finding of unavailability of and lack of adverse effect on U.S. workers. Where the Certifying Officer makes such a determination, the Certifying Officer shall document it in the application file.

(2) There is in the United States a worker who is able, willing, qualified and available for and at the place of the job opportunity according to the following standards:

(i) The Certifying Officer, in judging whether a U.S. worker is willing to take the job opportunity, shall look at the documented results of the employer's and the Local (and State) Employment Service office's recruitment efforts, and shall determine if there are other appropriate sources of workers where the employer should have recruited or might be able to recruit U.S. workers.

(ii) The Certifying Officer shall consider a U.S. worker able and qualified for the job opportunity if the worker, by education, training, experience, or a combination thereof, is able to perform in the normally accepted manner the duties involved in the occupation as customarily performed by other U.S. workers similarly employed, except that, if the application involves a job opportunity as a college or university teacher, or for an alien whom the Certifying Officer determines to be currently of exceptional ability in the performing arts, the U.S. worker must be at least as qualified as the alien.

(iii) In determining whether U.S. workers are available, the Certifying Officer shall consider as many sources as are appropriate and shall look to the nationwide system of public employment offices (the "Employment Service") as one source.

(iv) In determining whether a U.S. worker is available at the place of the job opportunity, the Certifying Officer shall consider U.S. workers living or working in the area of intended employment, and may also consider U.S. workers who are willing to move from elsewhere to take the job at their own expenses, or, if the prevailing practice among employers employing workers in the occupation in the area of intended employment is to pay such relocation expenses, at the employer's expense.

(3) The employment of the alien will have an adverse effect upon the wages and working conditions of U.S. workers similarly employed. In making this determination the Certifying Officer shall consider such things as labor market information, the special circumstances of the industry, organization, and/or occupation, the prevailing wage in the area of intended employment, and the prevailing working conditions, such as hours, in the occupation.

[45 FR 83933, Dec. 19, 1980, as amended at 56 FR 54930, Oct. 23, 1991]

§ 656.25 Procedures following a labor certification determination.

(a) After making a labor certification determination, the Certifying Officer shall notify the employer in writing of the determination and shall send a copy of the notice to the alien.

(b) If a labor certification is granted, the Certifying Officer shall follow the document transmittal procedures set forth at § 656.28.

(c) If a labor certification is not granted, the Certifying Officer shall issue to the employer, with a copy to the alien, a *Notice of Findings*, as defined in § 656.50. The *Notice of Findings* shall:

(1) Contain the date on which the *Notice of Findings* was issued;

(2) State the specific bases on which the decision to issue the *Notice of Findings* was made;